

**Idaho Board of Health and Welfare Minutes
May 14, 2002**

The Board of Health and Welfare convened at:
Pete T. Cenarrusa Building
450 W. State Street, 10th Floor CR
Boise, Idaho

Call To Order

Chairman Kenyon called the meeting to order at 12 Noon.

Roll Call

Marti Calabretta, Vice Chairman, called the roll.

Board Members Present:

Quane Kenyon, Chairman
Marti Calabretta, Vice Chairman
Bert Henriksen, Member
Dan Fuchs, Member
Robert Barlow, Member
Dr. Richard Roberge, Member
Senator Grant R. Ipsen (Ex-Officio)

Board Member Excused:

Janet Penfold, Member

Ex-Officio Member Excused:

Representative Thomas Loertscher

Department of Health and Welfare Staff Present:

David Humphrey, Deputy Director
Joyce McRoberts, Deputy Director
Jeanne Goodenough, Deputy Attorney General
William Walker, Communications Officer
Martha Puett, Assistant to the Board
Sherri Kovach, Administrative Procedures Section
Dick Schultz, Health
Ken Deibert, FACS
Joe Brunson, Medicaid
Tom Young, MD, Medicaid
Chuck Halligan, FACS
Jim Puett, FACS
Ed Van Dusen, FACS
Russ Duke, Health
Debby Ransom, Medicaid
Tracy Goodin, Management Services
Bev Barr, Administrative Procedures Section
Ken Mordan, Administrative Procedures Section
Frank Powell, Administrative Procedures Section
Angela Fink, Administrative Procedures Section

Others Present:

Tom Gordon, ICAN Marlon Herrera, ICAN
Roger Howard, LINC Betty Luginbill, Church Women United
Jill Reese, ICAN Clyde Everton, TIA
Leslie Felton-Jue, LINC Pam Baldwin, UYI
Karen McWilliams, ICAN Roger Sherman, United Vision for Idaho
Krista Ullartt, ICAN Sandra Halliesleben, ICAN
Anna Walling, ICAN Ron Mathews, ICAN
Thomas Gordon, ICAN Lee Flinn, Idaho Women's Network
Amy Herrera, ICAN Charlotte Lanier, Idaho Women's Network
Bryson Herrera, ICAN Ruth Herrera, ICAN
Earl Dean Bay, ICAN Donald Umphenour, ICAN
Tharrah Dye, ICAN Roy Eisenbrandt, ICAN
Lynette Eisenbrandt, ICAN Archi May Umphenour, ICAN
Rev. David Beck, Interfaith Allegiance

Public Comment Period

Chairman Kenyon opened the floor for [public comment](#) for 30 minutes on any subject not specifically shown on the agenda. Members of ICAN presented testimony and that testimony is appended to the original Board minutes. ICAN members are requesting the Department exclude SSI income when determining TAFI eligibility. Further Board discussion and action is noted under "Miscellaneous Board Discussion."

Agenda Item #1: Approval of Board Minutes

Chairman Kenyon presented the minutes of the January 29, 2002 meeting for adoption.

Motion: Marti Calabretta moved for approval of the minutes of the January 29,

2002 Board Meeting.

Second: Dan Fuchs

Vote: Motion carried. 6 Ayes 0 Nays 1 Absent (Penfold)

Agenda Item #2: Director's Report

Dave Humphrey, Deputy Director, reported Director Kurtz is traveling statewide at the request of the Governor and is attending the Governor's Regional Roundtables, and also visiting with staff at the Regional offices. Mr. Humphrey reported state agencies received a holdback on budgets with the revenue shortfall reported last month. Governor Kempthorne directed all state agencies to freeze hiring, meritorious increases or bonuses for staff until the end of the year. Mr. Humphrey stated the belt tightening continues and the Department is reviewing every individual open position in terms of emergency needs, i.e., child protection/investigation positions or clinical positions at state institutions that are required for licensure. The Department is working closely with the Governor's staff and is requesting that the Department be allowed to fill critical need positions. Out of state travel has been minimized and is being closely monitored. Staff has been utilizing teleconferencing for meetings and will continue to explore more audio teleconferencing opportunities. To date, the Department has not had lay-offs as a result of this last directive.

Agenda Item #3: Introduction and confirmation of newly appointed Regional Director, Region VII

Joyce McRoberts introduced Joan Gidney, newly appointed Director in Region VII. Ms. Gidney has been at State Hospital South for the last nine years as Director of Nursing Services and over the last year has provided leadership as acting Director for Regions VII and IV. Ms. Gidney stated she is excited to be part of the Department and thrilled and delighted in her new role. Ms. Gidney further stated she feels very strongly about the mission and vision of the Department and looks forward to working closely with the community.

Motion: Dr. Roberge moved to confirm the appointment of Joan Gidney as

Regional Director, Region VII.

Second: Robert Barlow

Vote: Motion carried. 6 Ayes 0 Nays 1 Absent (Penfold)

Agenda Item #4: Rules Governing Idaho Reportable Diseases Docket No. 16-0212-0201 (Temporary/Proposed)

Dick Schultz, Division Administrator for Health, gave a brief overview of these rules. Mr. Schultz reported that Idaho reportable diseases are regulated under these rules. The definition section has been updated to define waterborne outbreaks, the definition of "week" has been deleted and the incorporation by reference section has also been updated. Five conditions detectable by newborn screening were added to the reportable disease list, as were three infectious diseases, which include pneumococcal invasive disease in children less than 18 years of age, smallpox and waterborne diseases. The timeframe for reporting some diseases has been reduced from seven days to three days. The changes were discussed with the Public Health Committee of the Idaho Medical Association, who provided positive input.

Motion: Dan Fuchs moved that the Idaho Board of Health and Welfare adopt as Temporary, the Rules Governing Idaho Reportable Diseases as presented under Docket No. 16-0212-0201, effective July 1, 2002.

Second: Bert Henriksen

Vote: Motion carried. 6 Ayes 0 Nays 1 Absent (Penfold)

Agenda Item #5 Rules Governing Procedures For Newborn Testing – Docket No. 16-0212-0201– Repeal - Temporary/Proposed)

Russ Duke, Acting Bureau Chief for Clinical and Preventive Services, requested a repeal of the entire chapter of rules under Docket No. 16-0212-0201, as a significant number of changes were made to the rules and it was deemed more appropriate to re-write the updated chapter of rules.

Motion: Bert Henriksen moved that the Idaho Board of Health and Welfare adopt, as Temporary, the Rules Governing Procedures for Newborn Testing as presented under Docket No.16-0212-0201, effective July 1, 2002.

Second: Dr. Roberge

Vote: Motion carried. 6 Ayes 0 Nays 1 Absent (Penfold)

Agenda Item #6: Rules Governing Procedures For Newborn Testing – Docket No. 16-0212-0202 – Re-Write (Temporary/Proposed)

Russ Duke, Acting Bureau Chief for Clinical and Preventive Services, requested the approval of the new temporary rules, which replace the repealed rules under Docket No. 16-0212-0201. Mr. Duke gave a brief summary of changes, which include preliminary sections making the rules consistent with the requirements of the Department of Administration. The Definitions Section 010 was updated to reflect current technology and to include only those definitions that are relevant to the new set of rules. Mr. Duke called attention to Section 100.01, Conditions For Which All Infants Will Be Tested, which clearly specifies the five conditions that will be mandated for testing of all infants born in Idaho: biotinidase deficiency, congenital hypothyroidism, galactosemia, maple syrup urine disease and phenylketonuria. Section 100.07 outlines the fee structure. Newborn testing will no longer be funded by the State, so the Department will offer laboratory services with a fee charged for the test kits. The cost is collected up-front and includes analytical and diagnostic services.

Motion: Robert Barlow moved that the Idaho Board of Health and Welfare adopt, as Temporary, the Rules Governing Procedures for Newborn testing as presented under Docket No.16-0212-0202, effective July 1, 2002.

Second: Dr. Roberge

Vote: Motion carried. 6 Ayes 0 Nay 1 Absent (Penfold)

Agenda Item #7: Rules Governing Home Health Agencies, Docket No. 16-0307-0101

Debby Ransom, Bureau Chief for Facility Standards, reported the rule change brings the Department into compliance with the HCBS Waiver for the aged and disabled for changes that have been made in the federal regulations governing home health agencies. The change includes clean-up of legal authority language, and clarifying the definition of what constitutes a home health agency. The last three changes reflect a change in timeline from 62 to 60 days to mirror federal requirements.

Motion: Bert Henriksen moved that the Idaho Board of Health and Welfare adopt as Pending, the Rules Governing Home Health Agencies as presented in the final proposal under Docket No. 16-0307-0101, with the rules becoming final and effective immediately upon the adjournment sine die upon prior review by the 2003 Legislature.

Second: Dan Fuchs

Vote: Motion carried. 6 Ayes 0 Nay 1 Absent (Penfold)

Agenda Item #8: Rules Governing Certified Family Homes, Docket No. 16-0319-0101

Debby Ransom, Bureau Chief for Facility Standards, reported the 2001 Legislature amended the Board and Care Act, and the Residential Care Act for the elderly allowing the Department a waiver ability to approve up to four bed certified family homes with an effective date of July 1, 2001. These rules are a development of the waiver criteria for the certifying agency to use for Certified Family Homes that are interested in increasing their certified bed capacity from two to three or four.

Motion: Dr. Roberge moved that the Idaho Board of Health and Welfare adopt as Pending, the Rules Governing Certified Family Homes as presented in the final proposal under Docket No. 16-0319-0101, with the rules becoming final and effective immediately upon the adjournment sine die upon prior review by the 2003 Legislature.

Second: Robert Barlow

Vote: Motion carried. 6 Ayes 0 Nay 1 Absent (Penfold)

Agenda Item #9: Rules Governing Certified Family Homes, Docket No. 16-0319-0102

Debby Ransom, Bureau Chief for Facility Standards, reported that few, if any, certified family homes are equipped to transport an intensely violent, suicidal, or acutely ill resident. Recently some law enforcement officers are refusing to transport these residents, as they feel that it is the responsibility of the home. With the change in the rule, adding the verbiage "arrange for" emergency transportation, it will be made clear that the homes do not have a legal duty to provide the emergency transportation, as they are not equipped to provide the service in a safe manner. Instead the home will have the responsibility to arrange for emergency transportation. Ms. Ransom explained this rule was presented to the Board at its September 2001 meeting and she was asked whether local and law enforcement entities had been contacted regarding the proposed change to the rule. Ms. Ransom reported that since that time, both verbal and written contact has been attempted with the Idaho Sheriff's Association and the Idaho Chief of Police; however, no response has been received to date, nor was input provided by these entities during the past legislative session.

Motion: Robert Barlow moved that the Idaho Board of Health and Welfare adopt as Pending, the Rules Governing Certified Family Homes as presented in the final proposal under Docket No. 16-0319-0102, with the rules becoming final and effective immediately upon the adjournment sine die upon prior review by the 2003 Legislature.

Second: Dr. Roberge

Vote: Motion carried. 5 Ayes 1 Nay (Calabretta) 1 Absent (Penfold)

Agenda Item #10: Rules Governing Residential & Assisted Living Facilities in Idaho, Docket No. 16-0322-0101

Debby Ransom explained that the same change is needed in these rules as to the rules governing Certified Family Homes, Docket No. 16-0319-0102, as previously noted.

Motion: Dan Fuchs moved that the Idaho Board of Health and Welfare adopt as Pending, the Rules Governing Licensed Residential and Assisted Living Facilities in Idaho as presented in the final proposal under Docket No. 16-0322-0101, with the rules becoming final and effective immediately upon the adjournment sine die upon prior review by the 2003 Legislature.

Second: Bert Henriksen

Vote: Motion carried. 5 Ayes 1 Nay (Calabretta) 1 Absent (Penfold)

Agenda Item #11: Rules Governing Mandatory Criminal History Checks, Docket No. 16-0506-0201 (Pending)

Tracy Goodin reported the mandatory criminal history check rule is the "how to" and generally "the who" needs a background check. The background check must be fingerprint based and is conducted for any program, that requires a background check for applicants and/or staff who will be working with children or vulnerable adults. Ms. Goodin stated that during the last legislative session, the rule was modified to increase the fee charged for the background check from \$34 to \$45. The \$34 fee was a total pass-through fee to the Bureau of Criminal Identification and the FBI, thus the Department was not able to cover and/or recoup any of its cost for the background check. The fee increase coupled with procedural changes should now cover the majority of the Department's cost of the background check.

Motion: Dr. Roberge moved that the Idaho Board of Health and Welfare adopt as Pending, the Rules Governing Mandatory Criminal History Checks in Idaho as presented in the final proposal under Docket No. 16-0506-0201, with the rules becoming final and effective immediately upon the adjournment sine die upon prior review by the 2003 Legislature.

Second: Dan Fuchs

Vote: Motion carried. 6 Ayes 0 Nay 1 Absent (Penfold)

Agenda Item #12: Rules Governing Family and Children's Services Docket No. 16-0601-0101

Chuck Halligan, Bureau Chief of Family and Children's Services, reported the initial proposed rules were presented to the Board in September; however, as additional review and clarification was identified, the rules were withdrawn. Mr. Halligan stated the review has now been completed and rule changes are being made in response to state statutory and federal regulatory changes. Primary areas of substantive change are as follows: 1) No information, regarding parent(s) who place their child at a Safe Haven consistent with Idaho Code's Safe Haven Act, will be entered into the State Child Abuse Registry. This includes no entry of a "Valid" disposition. 2) Emergency assistance can now be authorized by any approved Department worker. Authorization is no longer limited to Family and Children's Services. 3) "Legal guardianship" and "guardianship assistance" are defined. Guardianship assistance is available to a legal guardian only for children who would otherwise remain in Department guardianship. These are children whose parents' rights have been terminated. Services that constitute guardianship assistance are delineated. 4) Standardized measurement of substantial impairment for a child to qualify for children's mental health is added. 5) Relatives who adopt are no longer eligible for non-recurring adoption assistance per federal regulation. 6) An annual reporting must be made as to the number of international adoption disruptions in each state.

Motion: Marti Calabretta moved that the Idaho Board of Health and Welfare adopt, as Pending, the Rules Governing Family and Children's Services as presented in the final proposal under Docket No. 16-0601-0101, with the rules becoming final and effective immediately upon the adjournment sine die upon review by the 2003 Legislature.

Second: Robert Barlow

Vote: Motion carried. 6 Ayes 0 Nay 1 Absent (Penfold)

Agenda Item #13: Rules Governing Child Care Licensing - Docket No. 16-0602-0201 (Temporary/Proposed)

Jim Puett, State Licensing Specialist, Division of Family and Children's Services, reported the proposed revisions to the Child Care Licensing Act to include rules for Children's Therapeutic Outdoor Programs were presented to the Board last November. However, at that time, the question arose regarding the Department having the statutory authority to develop rules for outdoor programs. The necessary amendments to the statute were made and presented to the Legislature this past January as Senate Bill 1318 and passed both Houses unanimously. Mr. Puett stated that currently there are four to six outdoor programs operational in Idaho. Several of these are part of existing residential programs that are currently reviewed and licensed, thus the cost associated with licensure of the outdoor program is expected to be minimal. Also, based on questions raised by the Board at the work session regarding CPR and first aid requirements for field directors and senior field staff, those requirements will be added to sections 810.02 and 810.03.

Discussion ensued and questions entertained regarding the licensing of for-profit and not-for-profit agencies and the potential of a fee-for-service in order to recoup costs associated with licensing. Mr. Puett explained that residential programs, children's agencies, and now outdoor programs will be regulated under the childcare licensing standards, and that in fairness to all these programs requiring licensure, all programs need to be evaluated for potentially creating a fee schedule.

Motion: Bert Henriksen moved that the Idaho Board of Health and Welfare Adopt, as Temporary and amended, Rules Governing Child Care Licensing as presented under Docket No.16-0602-0201, effective August 1, 2002

Second: Dan Fuchs

Vote: Motion carried. 6 Ayes 0 Nay 1 Absent (Penfold)

Agenda Item #14 Discussion : Role of the Board

Discussion on role of the Board was deferred to the September meeting. Board members agreed to form a subcommittee, which will meet with Director Kurtz and Mr. Humphrey prior to the next meeting. Subcommittee members include Quane Kenyon, Janet Penfold and Dr. Roberge; topics for discussion are the strategic plan, long-term direction of the Department, understanding of Department programs, and how cutbacks and budget decisions impact those programs, employees and clients.

Miscellaneous Board Discussion:

- Joyce McRoberts, Deputy Director, introduced the Department's newly formed Rules Unit as of April 22. Sherri Kovach, Coordinator, Bev Barr, Ken Mordan, Frank Powell, rule writers, and Angela Fink, customer services representative. The Rules Unit will be charged with review of the Department's rules for consistency, clarity and possible duplication and/or overlap. Ms. McRoberts stated Director Kurtz has given the directive to develop and maintain Department rules versus Division rules, and that for every new rule written, to delete two. The Rules Unit is located on the 10th floor and staff has already been initiated with a weeklong training session.
- Dr. Young reported that the plan to prior authorize anything over the initial four prescriptions per month for Medicaid clients remains suspended until a way can be developed to speed the prior authorization process. Dr. Young stated that effective May 20, Medicaid is expanding its prior authorization program to include the following groups of medication: non-sedating antihistamines, COX-2 NSAID inhibitors and proton pump inhibitors. Dr. Young explained that the three drug classifications are the latest steps in the State's efforts to slow the rapidly increasing cost of Medicaid pharmacy benefits; the drugs are over-utilized and expensive. Dr. Young gave the following example: a month's supply of Prilosec, a drug for acid reflux, costs approximately \$170; a month's supply of an alternative drug costs approximately \$8 - \$9.00. Dr. Young stated the Division of Medicaid continues to identify opportunities for cost savings.
- Board members briefly discussed ICAN's request for the Department to once again consider excluding SSI income when determining eligibility for TAFI. Board members agreed to form a subcommittee to address the questions and concerns expressed during the public comment period. Subcommittee members include Quane Kenyon, Marti Calabretta and Bert Henriksen. They will meet via conference call as soon as possible. Scott Cunningham will review the data gathered last year and reconfirm the number of new cases previously identified.
- Marti Calabretta distributed information related to blood lead sampling for review. Ms. Calabretta reported that in April, Governor Kempthorne announced the formation of the new Basin Environmental Improvement Project Commission to implement remediation of metals contamination in the Coeur d'Alene Basin. Created by state law enacted last year, the Commission will be responsible for adopting and implementing a basin work plan to carry out the EPA Record of Decision due this summer. The work plan may include other actions deemed necessary by the Commission. The Commission will adopt a short-term plan until a record of decision is issued by the EPA and agreed to by the State of Idaho.

Agenda Item #15: Adjournment

Motion: Chairman Kenyon made a motion to adjourn the meeting.

Second: Marti Calabretta

Vote: Motion carried. 6 Ayes 0 Nays 1 Absent (Penfold)

Respectfully signed and submitted by:

Quane Kenyon, Chairman, Health and Welfare Board
Janet F. Penfold, Secretary, Health and Welfare Board
Martha Puett, Executive Assistant and Recorder